

REMARKS

I. Status of the Application

Claims 1, 2, 4-9, 20, 21 and 24 are presently pending in the application. Claims 2, 4-9, 20 and 21 are objected to. Claims 1, 2, 4-9, 20, 21 and 24 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

Applicants thank the Examiner for the interview with Applicants' attorney, Judith L. Stone-Hulslander, on January 24, 2008 to discuss the outstanding rejections and objections.

Applicants have amended the claims under consideration to attend to formal matters and to more clearly define and distinctly characterize Applicants' novel invention. Claim 1 was amended to replace the language "a promoter region encoding nucleotides" with "a promoter region comprising nucleotides." Claims 2, 4-9, 20 and 21 were amended to replace "an isolated" with "the isolated." Claim 7 was further amended to replace "functional fragment thereof" with "functional fragment of a suicide gene."

Applicants respectfully submit that the amendments presented herein contain no new matter and present no new issues requiring further search. Applicants respectfully request entry and consideration of the foregoing amendments, which are intended to place the case in condition for allowance.

II. Objections

At page 3 of the instant Office Action, claims 2, 4-9, 20, 21 are objected to for reciting "an isolated or recombinant nucleic acid according to claim 1 or 5 or 20" because the parent claim is directed to only one isolated or recombinant nucleic acid. The Office Action suggests changing "a" to "the."

Applicants traverse this objection based on the amended claims now presented. Claims 2, 4-9, 20, 21 have been amended to change “an” to “the,” as suggested. Accordingly Applicants request that the objections of claims 2, 4-9, 20 and 21 be reconsidered and withdrawn.

III. The Pending Claims Are Definite

At page 2 of the instant Office Action, claims 1, 2, 4-9, 20, 21 and 24 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicants respectfully traverse this rejection in view of the amended claims now presented.

Regarding claim 1, the Office Action states that the recitation of “a promoter region encoding nucleotides 3200 to 3556 of SEQ ID NO:5” renders the claim indefinite because a promoter does not encode nucleotides. The Office Action suggests amending the claim to recite “comprising.” Without acquiescing to the rejection, claim 1 has been amended in the manner suggested.

Regarding claim 7, the Office Action states that the recitation of “an isolated or recombinant nucleic acid sequence according to claim 1 further comprising a suicide gene or functional fragment thereof” renders the claim indefinite because it is unclear if the functional fragment is for the nucleic acid according to claim 1 or the suicide gene. Without acquiescing to the rejection, claim 7 has been amended to recite, “further comprising a suicide gene or functional fragment *of a suicide gene*.”

Thus, the instant claims are definite. Accordingly, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1, 2, 4-9, 20, 21 and 24 under 35 U.S.C. § 112, second paragraph, as being indefinite.


IV. CONCLUSION

Having addressed all outstanding issues, Applicants respectfully request reconsideration and allowance of the case. To the extent the Examiner believes that it would facilitate allowance of the case, the Examiner is requested to telephone Applicants' attorney at the number below.

The Commissioner is hereby authorized to charge any additional fees or credit overpayment to Deposit Account No. 19-0733.

Respectfully submitted,

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